

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOHERTY KUSHIMO,

Petitioner,

v.

WARDEN SPAULDING,

Respondent.

ORDER

May 26, 2020

SOROKIN, J.

Doherty Kushimo, a prisoner at the Federal Medical Center in Devens, Massachusetts (“FMC Devens”), has filed a pro se action styled as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Doc. No. 1. Along with the petition, Kushimo filed an emergency motion seeking relief in light of the COVID-19 pandemic. Doc. No. 3. The respondent has notified the Court that it is seeking to consolidate this action, and others like it, with a separate habeas action filed on behalf of a proposed class of petitioners seeking presently pending before another session of this Court. See Doc. No. 5 (referencing motion to consolidate habeas petitions filed by individual inmates at FMC Devens with proposed class action Grinis v. Spaulding, No. 20-cv-10738-GAO).

Though Kushimo’s petition and related motion seek his release, they broadly challenge the conditions of his present confinement. His papers do not allege that release is the only means of adequately protecting him or that the respondent cannot protect him from imminent harm via other changes to the conditions at FMC Devens. Cf. Baez v. Moniz, No. 20-cv-10753-LTS, ECF

No. 64 at 3 (D. Mass. May 18, 2020) (concluding class action sounded in habeas, in part, because such allegations were expressly included in the petition). Accordingly, to the extent Kushimo's action is intended to seek individual relief under § 2241, it is DISMISSED, as it does not sufficiently allege a challenge to the fact or duration of Kushimo's confinement or to the execution of his sentence sounding in habeas. This ruling in no way impacts Kushimo's participation as a class member, or his ability to obtain or benefit from any relief awarded, in the pending Grinis proposed class action.

This, however, does not end the matter. Considered together, Kushimo's submissions are fairly read as presenting a request for compassionate release. Kushimo describes his filing with the respondent requesting such release, attaches related documents, and identifies reasons supporting such a request. See generally Doc. Nos. 1, 3, 3-1. A request of this nature is governed by 18 U.S.C. § 3582(c)(1) and is properly directed to the sentencing judge or another judge of that court. Kushimo is presently serving a sentence that was imposed in September 2018 by Senior District Judge David Cercone of the United States District Court for the Western District of Pennsylvania. Doc. No. 1 at 1; United States v. Kushimo, No. 14-cr-12-DSC, ECF No. 813 (W.D. Pa. Sept. 21, 2018). Accordingly, the Clerk shall TRANSFER this case to the Western District of Pennsylvania for assignment to Judge Cercone or another judge pursuant to the procedures of that court, for consideration and resolution of Kushimo's request for compassionate release.

SO ORDERED.

/s/ Leo T. Sorokin
United States District Judge